

O R D E R

Leave granted.

2. Disputes between the respondent-contractor and the appellant (South Eastern Railway) in regard to his claim for Rs.12,18,764/- for enhanced wages for the period 1.5.1988 to 31.12.1989 and Rs.19,00,440/- for the work done during the period 1.1.1990 to 2.8.1991, were the subject of arbitration. The Sole Arbitrator appointed by the High Court made an award dated 30.8.1999 rejecting the claims of the contractor and awarding costs against the contractor payable to a third party Welfare Fund. Feeling aggrieved, the contractor filed a petition under section 30 read with section 33 of the Arbitration Act, 1940 for setting aside the award. A learned Single Judge of the High Court by judgment dated 21.3.2005 allowed the said petition in part. He held that Rs.2,22,437/- was admitted to be due by the Railways to the contractor and therefore in substitution of the award of the

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Arbitrator, awarded Rs.2,22,437/- to the respondent. He also deleted the costs payable to the Army Central Welfare Fund.

3. Feeling aggrieved, the respondent-contractor filed an appeal before the Division Bench. He contended that on the concluding day of arbitration proceedings, the Railways had submitted a calculation sheet which showed that Rs.6,77,288/- was due to the contractor and the Arbitrator had ignored the said admission of the Railways. He sought setting aside of the award and appointment of a new Arbitrator to decide the disputes afresh. The Division Bench allowed the appeal of the respondent, by the impugned judgment dated 2.9.2008. The division bench held that in view of the admission in regard to Rs.2,25,437/- and Rs.6,77,288/- by the Railways, the Arbitrator could not have passed a nil award rejecting the claims of the contractor. It

therefore set aside the award and appointed a new Arbitrator to decide the disputes de novo. The appellants filed a review petition contending that it had not admitted that Rs.6,77,288/- was due to the contractor. The High Court rejected the said contention and dismissed the review petition by order dated 5.3.2009. Feeling aggrieved, the Railways has filed these appeals by special leave challenging the judgment dated 2.9.2008 and order dated 5.3.2009.

4. The grievance of the Railways is that the High Court ought not to have set aside the award in entirety and appointed a new arbitrator. It was contended that if any amount was found to have been admitted, the High Court ought to have made an award for such sum. It was however submitted that it had admitted only Rs.2,22,437/- to be due and the learned Single Judge had rightly awarded that sum and respondent was not entitled to any thing more.

5. We find that there is considerable force in the contention of the Railways that there was no need for appointment of a new arbitrator. If the High Court found that there was an admission in regard to any particular amount, the award should have been restricted to that amount and there was no need to set aside the award in entirety and appoint a new Arbitrator.

6. Learned counsel for the respondent submitted that to put an end to the long pending issue, the respondent would be satisfied if the award is restricted to Rs.6,77,228/- with appropriate interest.

7. In view of the admission inferred by the Division Bench of the High Court, we are of the view that it ought to have put an end to the matter by modifying the decree granted by the learned Single Judge. We are of the view that making an award for

Rs.6,77,228/- instead of appointing a fresh arbitrator would meet the ends of justice.

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8. We therefore, allow these appeals, set aside the orders dated 2.9.2008 and 5.3.2009 passed by the Division Bench of the High Court. We modify the order of the learned Single Judge by substituting the amount awarded to respondent as Rs.6,77,228/- in place of Rs.2,22,437/-. Consequently, there shall be a decree be made for Rs.6,77,228/- with interest at 6% per annum from 21.3.2005 (the date of the judgment of the learned single Judge) to date of payment.

[R.V.Raveendran] J.

New Delhi;
March 14, 2011.

[A.K.Patnaik] J.